

## HUMAN SERVICES BOARD

# INTRODUCTION

## FINDINGS OF FACT

1. The petitioner has an adopted daughter whose dentist has recommended comprehensive orthodonture for her. The orthodontist submitted a Medicaid request for orthodontic treatment on a form prepared by the Department. On that form he did not indicate that her condition met any one of the Department's major or minor criteria listed on the form. There was also no indication on the form that there was any "other handicapping malocclusion". The orthodontist wrote that the request was being submitted at the request of the petitioner. Department denied this request after determining

that the girl's orthodontic problem was not severe enough to qualify for comprehensive orthodontic treatment.

2. The orthodontist sent the petitioner a letter that summarized her daughter's dental problems, but which did not indicate any medical basis for orthodonture.

3. At the hearing in this matter held on March 1, 2006 the petitioner conceded that there is no evidence of a medical condition that would qualify her daughter for Medicaid coverage for her orthodonture. However, she stated that the Family Services Department (FSD) told her she nonetheless had to appeal OVHA's denial of Medicaid to the Board before FSD would consider covering her daughter's orthodonture in connection with petitioner's adoption subsidy.

ORDER

The Department's decision is affirmed.

REASONS

The Department has adopted regulations which require it to pay for only "medically necessary" orthodontic treatment for Medicaid recipients under the age of twenty-one. W.A.M. §§ M622.1, 622.2, and 622.3. The regulations, and rulings by the Board and the Vermont Supreme Court, further provide that to be considered medically necessary the patient's condition

must meet or equal one major or two minor malocclusions according to diagnostic criteria adopted by the department's dental consultant or if otherwise medically necessary under EPSDT found at § M100. See § M622.4.<sup>1</sup>

In this matter, the petitioner presented no medical evidence that her daughter meets any of the major or minor criteria used by PATH to determine severity for the orthodonture program, or that she has any other combination of dental problems that is equally as severe or

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<sup>1</sup> The criteria used by PATH require that the malocclusion be severe enough to meet a minimum of 1 major or 2 minor diagnostic treatment criteria as follows:

Major Criteria

Cleft palate  
2 impacted cuspids

Minor Criteria

1 Impacted cuspid  
2 Blocked cuspids per arch Other severe cranio-facial anomaly (deficient by at least 1/3 of needed space)  
3 Cogenitally missing teeth, per arch (excluding third molars)  
Anterior open bite 3 or More teeth (4 + mm)  
Crowding, per arch (10 + mm)  
Anterior crossbite (3 + teeth)  
Traumatic deep bite  
Impinging on palate  
Overjet 10 + mm (measured from labial to labial)

"handicapping" as any combination of those impairments that are listed. Nor has she provided any medical evidence that her daughter has any other medical condition that necessitates orthodonture as part of its treatment.

Inasmuch as the Department's decision in this matter is supported by the evidence and in accord with the pertinent regulations it must be upheld.<sup>2</sup> 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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<sup>2</sup> Besides being a complete waste of the petitioner's, the Board's, and the AAG's time, the apparent requirement on the part of FSD that the petitioner pursue an appeal to the Board in this case belies the Agency's public claims that it has streamlined and coordinated services between its various departments. Hopefully, this was a result of a lack of competence by particular individuals at FSD (which, presumably, can and will be corrected) rather than Agency policy.